

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 5:05-00113-01

MICHAEL REYNARD PENN

MEMORANDUM OPINION AND ORDER

The court is proceeding on its own motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to determine defendant's eligibility for a sentence reduction based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008.

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Order and Statement of Reasons, addendum to the PSI from the Probation Office, memoranda filed by defendant and the United States, and other matters of record. The court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

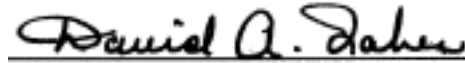
Having reviewed the materials of record, the court has determined that the motion must be **DENIED**. As defendant

concedes, he is not eligible for a reduction of his sentence because he was originally sentenced to 120 months in prison, the mandatory minimum for his offense of conviction. See U.S.S.G. § 1B1.10, Application Note 1(A).

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

It is SO ORDERED this 16th day of April, 2009.

ENTER:

A handwritten signature in blue ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge